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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOSE RODRIGUEZ,

14 Defendant.
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Case No. 2:05-CR-00397-KJD-PAL

ORDER

16 Presently, the Court has before it the Report of Findings and Recommendation (#48) filed by
17 Magistrate Judge Peggy L. Leen. Defendant filed Objections to Report and Recommendations of
18 United States Magistrate Judge (#51), to which the Government filed a Response (#52). After
19 having reviewed the Report in accordance with 28 U.S.C. § 636(b)(1), the Court will accept it in
20 whole. The Court overrules Defendant's objections (that there was no reasonable suspicion for a
21 DUI investigation, that assuming there was reasonable suspicion for DUI, the scope of the Fourth
22 Amendment was exceeded by the search of the cooler and tackle box, and that his Fifth Amendment
23 right to remain silent was violated as he unequivocally invoked this right) as they were essentially
24 raised previously and are adequately addressed by the Magistrate Judge's Report. Finally, the Court
25 overrules Defendant's most colorable objection – that the Magistrate Judge improperly extended
26 United States v. Davis, 512 U.S. 452 (1994) to the Fifth Amendment right to remain silent. Even

1 though the Ninth Circuit (as well as other circuits) has left this legal question open, as the Magistrate
2 Judge succinctly stated in her report, the circuits which have expressly addressed this issue have all
3 held that Davis extends to both components of the Miranda warning: the right to counsel and the
4 right to remain silent. The Court agrees with the Magistrate Judge's reasoning that Davis is a
5 supervening decision and should be extended to both components of the Miranda warning. The
6 inevitable appeal hopefully will allow the Ninth Circuit, if it so chooses, to address this question it
7 previously left opened, thereby providing guidance to the district courts in this circuit.

8 Accordingly, IT IS HEREBY ORDERED that Defendant's Objections to Report and
9 Recommendations of United States Magistrate Judge (#51) is **OVERRULED**.

10 IT IS FURTHER ORDERED that the Magistrate Judge's Report of Findings and
11 Recommendation (#48) is **ADOPTED** and **APPROVED**.

12 IT IS FURTHER ORDERED that Defendant's Motion to Suppress is **DENIED**.

13 DATED this 5th day of January 2007.

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17 Kent J. Dawson
18 United States District Judge
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